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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 270.

THE PACIFIC CO., LTD., A CORPORATION, *Appellant,*
vs.
CHARLES G. JOHNSON, STATE TREASURER OF THE STATE OF CALIFORNIA.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT AS TO JURISDICTION ON APPEAL.

JOSEPH D. PEELER,
DONALD V. HUNTER,
Counsel for Appellant.

ROBERT N. MILLER,
MELVIN D. WILSON,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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STATEMENT AS TO JURISDICTION ON APPEAL.

May it Please the Court:

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

A.

STATUTORY PROVISION SUSTAINING JURISDICTION.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 936, 937 (United States Code, Title 28, Section 344), provides that Section 238 of the Judicial Code is amended to read in part as follows:

> "Section 237 (a). A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the question is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The Act of January 31, 1928, Chapter 14, Sections 1 and 2, 45 Stat. 54, provides as follows:

> "That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of errors shall hereafter be obtainable by appeal.
>
> "Sec. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk

with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required: *Provided, however,* That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts."

The Act of April 26, 1928, Chapter 440, Section 1, 45 Stat. 466, provides as follows:

"That section 2 of an Act entitled 'An Act in reference to writs of error,' approved January 31, 1928, Public, Numbered 10, Seventieth Congress, be, and it is hereby, amended to read as follows:

"'Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error.'"

B.

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL.

The decree sought to be reviewed was entered on the 31st day of March, 1931. (R. 36.)*

The application for appeal was presented on the 18th day of June, 1931. (R. 2-4.)

*All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the Supreme Court of the State of California and on file with the Clerk of this court. The record has not yet been printed.

C.

NATURE OF CASE AND RULING BELOW.

The case draws in question the validity of a statute of the State of California, on the ground of its being repugnant to the Constitution of the United States and the decision of the court below is in favor of its validity. (R. 24, 30.)

This case arises under a law of the State of California, entitled the Bank and Corporation Franchise Tax Act (Stat. 1929, Chap. 13, p. 19) providing for and requiring the inclusion of interest from "federal, state, municipal or other bonds" in the net income base by which the state franchise tax of banks and corporations is measured. The case relates to the inclusion by the state taxing authorities, in the appellant's net income base, of interest from certain bonds issued by improvement districts of the State of California, all of which bonds were issued and purchased by appellant prior to November 6, 1928.

Prior to November 6, 1928, these bonds, and the income therefrom, were exempt from taxation by the State of California under the provisions of Section 1-¾ of Article XIII of the State Constitution, which provides that such bonds and securities "shall be free and exempt from taxation." On the date mentioned, section 16 of Article XIII of the State Constitution was adopted, providing, in part, that corporations other than banks "shall annually pay to the state for the privilege of exercising their corporate franchises within this state a tax according to or measured by their net income." Pursuant to this constitutional amendment, the legislature passed the Bank and Corporation Franchise Tax Act which, *inter alia*,

defined the term "gross income" to include "all interest received from federal, state, municipal or other bonds." Acting under the provisions of this act, the appellee herein required the appellant herein to pay a franchise tax based in large part upon interest received by it from California district improvement bonds issued, and acquired by the appellant, prior to November 6, 1928.

After conforming with the provisions of the state law with reference to protests and refund claims, the appellant filed a suit against the appellee, the proper representative of the state in such an action, for the recovery of the taxes so paid, because they were imposed by a law which was invalid as repugnant to the Constitution of the United States, on the ground that it represented an impairment of preexisting contracts, contrary to the provisions of Article 1, section 10, of the Constitution of the United States. The trial court held that the statute was valid, and the appellant perfected an appeal to the Supreme Court of the State of California, the court of last resort in said state. In an opinion handed down on March 31st, 1931, said court affirmed the lower court, holding that the law was not repugnant to the Constitution of the United States. A dissenting opinion was filed by one member of the court, expressing the view that the law was unconstitutional as an impairment of preexisting contracts, with reference to the interest from the bonds here in question.

The majority of the Supreme Court of the State of California relied largely upon the decision of this court in *Educational Films Corporation of America v. Ward, Atty. General of New York*, 282 U. S. 379.

The dissenting member relied largely upon the decision of this court in *Macallen Co. v. Massachusetts*, 279 U. S. 620.

D.

CASES BELIEVED TO SUSTAIN JURISDICTION.

The following decisions of this court are believed to sustain jurisdiction of this appeal:

Macallen Co. v. Massachusetts, 279 U. S. 620.
Gillespie v. State of Oklahoma, 257 U. S. 501.

We respectfully submit that this court has jurisdiction of this appeal by virtue of Section 237 of the Judicial Code, as amended by the Act of February 13, 1925.

JOSEPH D. PEELER,
DONALD V. HUNTER,
Counsel for Appellant.

ROBERT N. MILLER,
MELVIN D. WILSON,
Of Counsel.